

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

RAY ACUNA,

Plaintiff,

v.

TDCJ VAN DRIVERS, *et al.*,

Defendants.

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CIVIL ACTION NO. 5:20-CV-00185-RWS

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 32), which contains her findings, conclusions and recommendations for the disposition of this matter. Plaintiff Ray Acuna, proceeding *pro se*, filed the above-captioned civil action complaining of alleged violations of his constitutional rights. Docket No. 13. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. The Court hereby adopts the Report and Recommendation of the Magistrate Judge (Docket No. 32) as the findings and conclusions of this Court.

Plaintiff's amended complaint alleges he was injured when he was improperly loaded into a wheelchair van backwards, without restraints or seat belts. Docket No. 13 at 5. Plaintiff specifically alleges the van driver slammed on the brakes, causing him to flip backwards out of his chair and hit a metal bracket on the floor. *Id.* Plaintiff further contends that unit administrators were in charge of training the officers involved. *Id.* Plaintiff further contends the unit administrators were involved in a "conspiracy to retaliate" and that the grievance officers did not properly investigate his grievances. *Id.* at 3. Plaintiff's amended complaint also refers to the

Americans with Disabilities Act (“ADA”). *Id.* at 8. Plaintiff did not, however, plead any facts to support a claim under the ADA.

After reviewing the pleadings, the Magistrate Judge issued a Report recommending the lawsuit be dismissed without prejudice for failure to state a claim upon which relief may be granted. Docket No. 32. In the interest of justice, the Magistrate Judge also recommended that the statute of limitations be suspended for a period of 60 days following the entry of final judgment. A copy of the Report and Recommendation was mailed to the Plaintiff. Plaintiff acknowledged receipt of the Report and Recommendation on January 28, 2022. Plaintiff was granted two extensions of time, through May 2, 2022, to file objections to the Report and Recommendation. To date, no objections have been filed.

Plaintiff is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge’s findings, conclusions and recommendations; and, except upon grounds of plain error, Plaintiff is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a magistrate judge’s report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”), *cert. denied*, 492 U.S. 918 (1989). Accordingly, it is


ORDERED that the Report of the Magistrate Judge (Docket No. 32) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Plaintiff's above-titled cause of action is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted. It is further

ORDERED that the statute of limitations shall be suspended for a period of 60 days following the date of entry of final judgment. It is further

ORDERED that any and all motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 15th day of June, 2022.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE